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EVTECH MEDIA LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

EVTECH MEDIA, LLC, a Utah limited
liability company,

Plaintiff,

v.

ZURIXX, LLC, a Utah limited liability
company, FINANCIAL MEDIA GROUP,
LLC dba FLIPPING FORMULA, a Utah
limited liability company, PETER
SOULHERIS, an individual, DAVE
SEYMOUR, an individual, MARC HRISKO,
an individual, LISA ANDERSON, an
individual, and MITCH JOHNSON, an
individual,

Defendants.

Civil Action No: 2:13-cv-00621-DB

**DECLARATION OF BRANDON
MAUGHAN IN OPPOSITION TO MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Judge Dee Benson

I, Brandon Maughan, hereby declare as follows:

1. I am currently a Product Manager at My e Biz, a position that I have held since February 2007. I have also been the Director of Seminar Fulfillment/Logistics at Professional Marketing International (PMI) since February 2012. As part of my responsibilities in both roles, I have provided fulfillment and logistical support for speakers and seminar directors (“workshop teams”) working for The Evolution Group, LLC (“The Evolution Group”) and for workshop teams working for EvTech Media LLC (“EvTech”).

2. On July 20, 2011, I received an email from Jim Carlson at The Evolution Group stating as follows: “We want all of the workshop teams to have a workbook to give out to students. This is something that they identified way back when we were with them in Phoenix. I am finally getting some traction on this. The Edwards team has one that I’ve sent around for adoption or modification by the other teams. The first team to get back with me was Marc Hrisko’s team. They have their own workbook that they’ve been working on that they just need to have a cover for, then its ready to be produced.” A true and correct copy of this email can be seen in an email thread attached hereto as Exhibit 1. I understood the reference to “[t]he Edwards team” to be a reference to Stephen Edwards, a speaker for The Evolution Group, and Jennifer Edwards, the seminar director that supported him. I understood the reference to “Marc Hrisko’s team” to be a reference to Marc Hrisko, a speaker for The Evolution Group, and Lisa Anderson, the seminar director that supported him. Attached to the email was a file entitled “Insiders_Edge_Manual.pdf.”

3. On July 21, 2011, I sent a return email to Jim Carlson asking him to clarify whether “the same workbook would be used by every team.” Carlson responded that “We are

trying to get the teams using the same one but it has been hard. So initially we will probably have a different one for each team.” After exchanging emails discussing which company would bear the cost of printing the workbooks, I sent a return email to Carlson on July 27, 2011 indicating that we would design a cover for the Hrisco workbook and “print a couple hundred of the Hrisco workbook to start with.” I also explained that “[a]s other teams get you their workbook contents, pass them onto me and we’ll take it from there.” A true and correct copy of my July 27 email to Carlson, in a thread containing the July 21 emails described above, is attached hereto as Exhibit 2.

4. That same day, on July 27, 2011, I forwarded Carlson’s July 20 email to Marcus Wilkes, a graphic designer, to design a cover for the workbook. Attached to my July 27 email was the file entitled “Insiders_Edge_Manual.pdf” that Carlson had sent to me with his July 20 email. A true and correct copy of my July 27 email is attached hereto as Exhibit 1. A true and correct printout of the attached file is attached hereto as Exhibit 3.

5. As seen in the printout attached as Exhibit 3, the Hrisco workbook file was sent to me with the phrase “Insiders’s Edge” on the front page, with a misspelling of the “Insider’s Edge” brand. I had Marcus replace the misspelled phrase with “The Insider’s Edge™” and design a cover for the workbook. On August 1, 2011, I sent an email to Jim Carlson with a copy of the cover design for the Hrisco workbook along with a copy of the manual with the corrected spelling. I also asked Carlson if we should put the speaker’s name on the spine of the cover. I wrote: “I’m wondering if we should put the speaker’s name on the spine. Perhaps the spine could read ‘Insider’s Edge – Marc Hrisco’. We could do this for every speaker’s workbook. It could be a way we distinguish each one.” A true and correct copy of my August 1 email is attached

hereto as Exhibit 4. A true and correct copy of the attached cover is attached as Exhibit 5, and a true and correct copy of the first page of the attached manual is attached as Exhibit 6.

6. In response, Carlson responded: "This looks great. Let's roll with it! On the spine, yes, let's put the speaker's name on it as you suggest. Let's leave the name off of Edwards for right now though so that we can also use it as a generic workbook in case we bring someone new." A true and correct copy of Carlson's email is attached hereto as Exhibit 7. I understood from Carlson's email that he wanted the workbook for the Edwards team to be available to be used for other, future workshop teams. As will be explained below, however, it turned out that the Hrisko workbook became the "generic workbook" for other workshop teams.

7. I then was copied on an email sent by Carlson to Mark Hrisko and Lisa Anderson wherein Jim wrote: "These look great. I told Brandon Maughn to go ahead and produce them a minute ago, but thought we had better run them by you one more time before we go to print. Let us know if you see any errors." I was then copied on a response by Lisa Anderson, who wrote: "The cover looks GREAT! I like it much better than the standard Insider's Edge cover. I also love the idea of having the team name "Marc Hrisko" on the spine. I can't wait to see the finished product! The only concern I have, is the photo of Marc & his wife on the inside cover...it prints dark. Do you think they can lighten it up...or should we see if Marc has another photo? Marc what are your thoughts?" The next day, on August 2, I sent Marcus Wilkes an email seeing if he could lighten the photo. After Marcus did his best to manipulate the photo, I forwarded a copy to the group to see if it was acceptable. Marc Hrisko responded, writing: "Looks GREAT!! Thanks guys you all ROCK!!!" A true and correct copy of an email thread showing the foregoing e-mail exchanges is attached hereto as Exhibit 8.

8. Meanwhile, in response to Jim Carlson's comment regarding using the Edwards workbook as a "generic workbook," I sent an email on August 2, 2011 to Carlson writing: "Jim – I've only been sent Hrisko's workbook. Do you have an Edwards workbook?" In response, Carlson explained: "Elite produced that. I've got a message in to Wade over there to get the files so that I can give them to you." "Elite" was the name of another fulfillment and logistical support company. A true and correct copy of an email thread with the foregoing e-mail exchanges is attached hereto as Exhibit 9. On August 4, Erin McCarthy at The Evolution Group sent me a link to download the Edwards workbook file, and I asked Marcus Wilkes to create a cover for the Edwards workbook. On August 9, I sent proposed covers for both the Hrisko workbook and the Edwards workbook to Jim Carlson. Both covers used the "Insider's Edge" brand. In response, Carlson asked if we could do the workbooks with a spiral binding. I received a quote for spiral binding on August 11. In response to inquiries from the Edwards team and The Evolution Group, I explained that the printing of the workbooks would be done by the end of the next week. True and correct copies of the email threads described above are attached hereto as Exhibits 10, 11, 12, and 13.

9. On September 7, 2011, I received an email from Jim Carlson attaching an outline created by another workshop team (Keith Bradshaw's team) and asking us to generate another workbook from the outline. A true and correct copy of an email thread describing the above is attached hereto as Exhibit 14. On September 9, 2011, I received emails from The Evolution Group and another workshop team (Jim Anderson's team) with a request to create another workbook, explaining that "[w]e are going to go with Marc Hriskos exact book MINUS page number 2 that has Marc's personal information." A true and correct copy of an email thread

describing the above is attached hereto as Exhibit 15. I sent out an order to print 300 Edwards workbooks and 250 Anderson, Bradshaw, and Hrisko workbooks on September 12, as evidenced by the email attached hereto as Exhibit 16.

10. In November 2011, I received an email from The Evolution Group with a request to create another workbook from slides provided by another workshop team (Gerald Martin's team). In December 2011, I shipped workbooks used by Jim Anderson's team for use at workshops conducted by a new workshop team (Brock Madsen's team). In January 2012, I received an email from EvTech with a request to create another workbook from materials provided by another workshop team (Paul Young's team). I also received an email that stated that another workshop team (Stephen Libman's team) had been using the same version of the Hrisko workbook as Jim Anderson and that Libman wanted to edit it. I provided him with a link to the source files that we had.

11. In February 2012, I received an email from the seminar director for Jim Anderson's workshop team with a request for changes to their workbook. Many of those changes were requests to change references in the workbook from "Marc" or "Dean" to "Jim." In March and May 2012, I received a similar request from the Brock Madsen team. By this time, we were referring to this version of the Hrisko workbook (being used by Jim Anderson's and Brock Madsen's team) as a "generic" workbook.

12. In May 2012, I received an email from Lisa Anderson explaining: "[W]e are going to make some changes in the next few weeks on the workbook....As soon as we finalize it all I'll send an updated file of the workbook." In August 2012, I received an email from Lisa Anderson requesting us to delete some pages from the workbook and to add three "homework"

documents at the end of the workbook. A true and correct copy of these two emails are attached hereto as Exhibits 17 and 18. I had Marcus make these changes, Lisa Anderson approved them, and I sent them to the printer on August 16, 2012.

13. In August or September 2012, we were asked by EvTech to make several edits to the language in all of the workbooks being used by all of the presenters, including the Hrisko workbook. However, we discovered that we did not have an editable version of the Hrisko workbook. On September 4, 2012, I sent an email to Lisa Anderson, explaining that EvTech had requested an edited version of the workbook, explaining that the workbook had originally been sent to us in .pdf format, and asking if she had an editable version that she could send to me. She responded "Sure," and sent me a Microsoft Publisher file. When we reviewed the Microsoft Publisher file that she sent, it did not appear to be the most recent version. On September 6, I sent her an email, writing: "Lisa—we're wondering if the Publisher file you sent us is the most recent version? I believe we've made some changes for you to this workbook over the last several months. Just not sure if you've applied those same changes to the Publisher file. Please let us know." She responded: "No it's not the most recent version...if you can send it to me as a PDF I can mark it up with edits." A true and correct copy of an email thread with these e-mail exchanges is attached hereto as Exhibit 19. In response, we sent her a link to a pdf file, she created edit notes in that file, and sent us back a link to it.

14. After we made edits to the language in the Hrisko workbook, we sent it to Lisa Anderson for her approval. On September 11, 2012, she sent me an email (copying Hrisko) and explaining that she had made additional edits and that she was waiting for Hrisko to approve them. Hrisko responded that he would look at the proposed changes and then he asked to see the

workbooks that the Edwards and Libman team were using, presumably so he could see what kinds of language changes they had made to their workbooks. On September 20, 2012, I responded as follows: "Libman's is based off of yours, almost identically. He's working on his own, but not sure when he'll have it done...." A true and correct copy of an email thread with these email exchanges is attached hereto as Exhibit 20. In response to that email, I did not receive any objections from Hrisko or Anderson regarding the fact that another workshop team was using the same workbook as Hrisko's team. Finally, on October 17, 2012, I received an email from Lisa Anderson explaining: "I'm sorry this edit took so long!!!! Here is the manual with the suggested edits that make more sense to us. If you have a better suggestion please let me know as I'm sure the other teams have come up with different edits.... I'm also adding more of our handouts to be added in the back of the manual as perforated tear out pages to save money on printing. Please add in the following order." She then listed 8 documents and provided links to them. A true and correct copy of the October 17 email is attached hereto as Exhibit 21. On October 23, 2012, Marcus sent an email to Anderson asking if she wanted to add additional perforated handouts that other workshop teams had been using, but she declined.

15. Meanwhile, on October 15, 2012, Matt Ericksen at EvTech instructed us to add a disclaimer to the workbooks for all of the speakers and suggested adding it on page 2 of the "generic, Hrisko, Edwards and Anderson" workbooks. He provided us with the text of the disclaimer. A true and correct copy of the October 15, 2012 email is attached hereto as Exhibit 22.

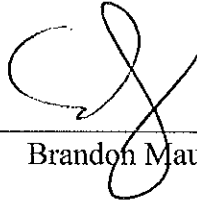
16. On October 23, 2012, I received an email from Marcus Wickes explaining that he was still working on adding the disclaimer to the workbooks. He explained that "[s]ince we

received content changes at the same time I'm updating all of them with the appropriate changes as well as these disclaimer additions." A true and correct copy of the October 23 email is attached hereto as Exhibit 23. This process was completed on November 8, 2012 for all of the workbooks except those used for one of the workshop teams (Paul Young's team). On that date, I sent an email to Lisa Anderson and Marc Hrisko, explaining: "We rebranded your workbook 3 different ways, added the disclaimer, and removed any references to 'Insiders Edge'. Please review asap before we have it printed." With that email, I forwarded a link to allow them to view the updated version of the workbook. I also sent similar links and emails to the other workshop teams. We needed to "rebrand[]" the workbook because the Hrisko workshop team was presenting workshops on behalf of three different EvTech client brands ("Insider's Financial," "Yancey Events," and "McGillivray"). We removed references to "Insider's Edge" because, at that point, "Insider's Edge" was no longer a brand serviced by EvTech (or the Hrisko workshop team). "Branding" the workbook means that we created covers and a cover page for the workbook that listed a particular brand name and made sure that any references within the workbook were consistent with that branding. In response to my email, Lisa Anderson replied: "what happened to the handout inserts in the back??" At that point, we realized that we had made a mistake and explained: "Ooops. Good catch Lisa. The handouts are separate files from the rest of the workbook content and I forgot to combine them after making the edits. I have uploaded them again with the handouts in the backs now." With that email, we provided a link to the new version. In response, Anderson sent an email: "The workbooks look great. I'm rethinking the last handout insert 'Wholesale' You can leave it in Dean's 'Insider's Financial' Brand Workbook...but remove it from the other 2 workbooks. I will need to re-do it for the

other two brands....” We removed the “Wholesale” handout from the Yancey Events and McGillivray workbooks as Anderson had requested. A true and correct copy of an email thread with the foregoing emails is attached hereto as Exhibit 24. I authorized the printing of these new workbooks on November 13, 2012. A true and correct copy of the Yancey Events version of this new workbook is attached hereto as Exhibit 25.

17. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my personal knowledge.

DATED: October 17, 2013

By  _____
Brandon Maughan